IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.954 OF 2005

Modern Enrica Construction Pvt.Ltd. ..Appellant.

V/s.

Shri Vithal B. Thopte & Ors. ..Respondents.

Ms.Mandira Moitra i/b.Tejas Dande & Amogh Paralikar for appellant.

Mr.S.M.Sakhardande i/b. H.G.Dharmadhikari & M.S.Kamble for respondent Nos.1 and 2.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 20, 2006.

P.C. :

1. Heard counsel for the parties.

2. I see no reason to depart from the conclusion reached by the Court below in rejecting prayer for interim relief as sought below Exh.5 for temporary injunction. Even if the appellant succeeds in establishing the case made out in the plaint, all that the appellant would be entitled is for refund of the amount paid by the appellant to the respondents alongwith interest or damages, if any. For the nature of that relief, question of injuncting the respondent from dealing with the property does not arise. It would have been a different matter, if the

appellant were to take out application for attachment before the Judgment provided necessary case to support that relief is made in the application and established from the record.

3. Suffice it to observe, that the relief as claimed by the appellant has been rightly rejected by the trial Court. Hence, this appeal is dismissed. However, it will be open to the appellant to take recourse to such other remedy, as may be permissible by law, which will be considered on its own merits in accordance with the law, uninfluenced by the observations made in this order or the impugned Judgment.